

# FINAL BILL REPORT

## ESHB 1792

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Synopsis as Enacted

**Brief Description:** Establishing search and arrest authority provisions of offenders by department of corrections personnel.

**Sponsors:** House Committee on Human Services (originally sponsored by Representatives Dickerson, O'Brien, Hurst, Morrell, Orwall, Green, Dammeier, Klippert, Walsh, Kelley and Ormsby; by request of Department of Corrections).

**House Committee on Human Services**  
**Senate Committee on Human Services & Corrections**

### **Background:**

#### Searches of an Offender Under Supervision.

Searches without a warrant are generally unreasonable *per se* unless it is demonstrated that the public interest justifies creation of an exception to the general warrant requirement. An offender who is under the supervision of the Department of Corrections (DOC) has a diminished right to privacy. Under the Fourth Amendment of the United States Constitution and Article 1, Section 7 of the Washington State Constitution, a community corrections officer (CCO) may search an offender's person, automobile, residence, or personal property without obtaining a warrant if the community corrections officer has reasonable cause to believe that the offender has violated a condition of his or her release. Reasonable cause must be based upon a well-founded suspicion that a probation violation has occurred.

A well-founded suspicion is analogous to the cause requirement of a *Terry* stop (contact with a police officer) in that it must be based upon specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant a search. A reasonable suspicion requires only sufficient probability, not absolute certainty. A well founded suspicion is a lesser standard of proof than probable cause.

#### Arrest of Offender Under Supervision.

If an offender violates any condition or requirement of a sentence, the CCO may arrest the offender without a warrant pending a determination by the court.

The CCO may arrest the offender for a crime committed in his or her presence, and the CCO must report the facts and circumstances of the conduct of the offender with recommendations

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to the court. If the CCO arrests or causes the arrest of an offender, the offender is detained in the county jail of the county in which the offender was taken into custody and the offender may not be released on bail or personal recognizance except through approval of the court.

**Summary:**

For the safety and security of the DOC staff, CCOs are granted authority to conduct pat-down searches or other limited security searches without reasonable cause when an offender is present on or while preparing to enter the premises, grounds, facilities, or vehicles of the DOC. Pat-down searches may only be conducted by like-gendered staff except in emergency situations. If the offender commits a crime in the presence of the CCO, the CCO may report the offense to either the court or the DOC hearing officer.

If an offender violates any condition or requirement of a sentence, the CCO may arrest (or cause the arrest of) the offender without a warrant, pending a determination by a court or a DOC hearing officer. The CCO may arrest an offender for an offense committed in his or her presence. The CCO is required to report the circumstances of the arrest, with recommendations, to the court or to a DOC hearing officer.

Upon the detention of an offender whom the CCO has arrested or caused to be arrested, authorized staff of the DOC, in addition to the court, have the authority to approve a release of the offender on bail or personal recognizance.

**Votes on Final Passage:**

House	97	0	
Senate	43	0	(Senate amended)
House	91	0	(House concurred)

**Effective:** July 26, 2009